

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUMMONS FOR JUDGEMENT NO. 485 OF 2003
IN
SUMMARY SUIT NO. 447 OF 2003

Kalpana K. Desai .. Plaintiffs
versus
Jayesh A. Joshi .. Defendants

...

Mrs.Naina Desai i/b Rajesh Desai for the plaintiff.
Mr.C. Ardeshir i/b Kantilal M. Mehta for the
defendant.

CORAM : D.G. KARNIK, J.

DATED : 1st March 2005.

P.C.:

1. Heard the learned counsel for the parties.
2. This Summons for Judgement is taken out by the plaintiff in her suit for recovery of the loan of Rs.4,50,000/- given to the defendant and interest

thereon. According to the plaintiff, the defendant issued a cheque of Rs.2,00,000/- on 3rd January 2003 towards the part payment of the loan but the same was dishonoured when presented for payment. The plaintiff has therefore sued also on the cheque and claimed interest at 18% p.a. u/s.80 of the Negotiable Instruments Act.

3. So far as the issuance of the cheque is concerned, there is no denial of the signature on the cheque. However, the defence is that the cheque was not issued to the plaintiff but was issued in blank to one Kamlesh Butala. The cheque being an inchoate instrument, the authority to fill up the details is to be presumed u/s.20 of the Negotiable Instruments Act. Since there is no denial of a signature on the cheque and since there is a presumption of consideration arising u/s.118 of the Negotiable Instruments Act, in my view, the defendant has no defence so far as Rs.2,00,000/- are concerned.

4. The learned counsel for the defendant submits that the suit is barred by limitation. This may be a good defence in respect of the balance amount. As the cheque has been issued and the suit is also based

on the cheque it could be filed within three years of the cheque. The learned counsel for the defendant relies upon the judgement of the Division Bench of this Court in Chintaman Dhundiraj Vs. Sadguru Narayan Maharaj reported in AIR 1956 Bombay 553. In that case, it was held that the cheque which had been dishonoured would not constitute the part payment within the meaning of section 18 of the Limitation Act. In view of the said judgement, the said cheque of Rs.2,00,000/- would not extend the period of limitation so far as the balance of the loan is concerned. However, the liability for the amount of the cheque would arise on the date of the issuance of the cheque and hence suit for the amount of the cheque is within limitation.

5. The learned counsel for the plaintiff submits that the suit transactions amounts to a money lending transaction. So far as sum of Rs.2,00,000/- is concerned, suit is based on a Negotiable instrument and hence the bar under Money Lenders Act is not applicable.

6. For these reasons, the defendant is granted unconditional leave to defend the suit so far as

claim in excess of Rs.2,00,000/- is concerned. The defendant is granted conditional leave to defend the suit so far as claim of Rs.2,00,000/- is concerned subject to his depositing in the Court a sum of Rs.2,00,000/- within a period of four weeks. Liberty to the plaintiff to apply for withdrawal by furnishing security. On such deposit, the suit shall stand transferred to the list of commercial causes. The defendant to file written statement within a period of one month.

D.G. KARNIK, J